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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Mozella Mobley, an individual,

Plaintiff,

v.

**Hatfield Portfolio Group, LLC,
d/b/a Harbinger Processing
Group**, a limited liability company

Defendant.

Case No. '14CV1302 H BLM

Verified Complaint for Damages

Jury Trial Demanded

Introduction

1. Mozella Mobley (“Plaintiff”), brings this action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Hatfield Portfolio Group, LLC, d/b/a Harbinger Processing Group (“Defendant”), and their agents with regard to attempts by Defendants, debt collectors, to unlawfully and abusively collect a debt allegedly owed by Plaintiff, causing Plaintiff damages.

2. For purposes of this Complaint, unless otherwise indicated, “Defendant” includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers of Defendant(s) named in this caption.

Jurisdiction and Venue

3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d), 47 U.S.C. § 227, and 28 U.S.C § 1367 for pendent state law claims.

4. This action arises out of Defendants' violations of the following: the Telephone Consumer Protection Act, 47 U.S.C. §§ 227 et seq ("TCPA"), the Fair Debt Collection Practices Act, 15 U.S.C. § 1691 et seq. ("FDCPA"), the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA").

5. Venue is proper in this District pursuant to 28 U.S.C § 1391(b), in that Plaintiff resides in this District, Defendants transact business in this District and the acts giving rise to this action occurred in this District.

Parties

6. Plaintiff is a natural person who resides in the City of San Diego, County of San Diego, State of California and is obligated or allegedly obligated to pay a debt and is a "consumer" as that term is defined by 15 U.S.C § 1692a(3).

7. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff and is a "debtor" as the term is defined by Cal. Civ. Code § 1788.2(h).

8. Plaintiff is informed and believes, and thereon alleges, that Defendant is a collection agency and a New York limited liability company operating from an address of 2390 N. Forest Rd., Getzville, NY 14068-1294, and is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

9. Plaintiff is informed and believes, and thereon alleges, that Defendants are not attorneys or counselors at law and are persons who, in the ordinary course of business, regularly, on behalf of themselves or others, engages

1 in debt collection as that term is defined by Cal. Civ. Code § 1788.2(b), and are
2 “debt collectors” as that term is defined by Cal. Civ. Code § 1788.2(c).

3 10. This case involves money, property or their equivalent, due or owing
4 or alleged to be due or owing from a natural person by reason of a consumer credit
5 transaction. As such, this action arises out of a “consumer debt” and “consumer
6 credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

7 8 **Factual Allegations**

9 11. At all times relevant, Plaintiff was an individual residing within the
10 State of California.

11 12. Plaintiff is informed and believes, and thereon alleges, that all times
12 relevant, Defendant conducted business in the State of California.

13 13. Plaintiff is informed and believes, and thereon alleges, that Dylan
14 Walker, Luis Gomez, Anthony Rossi, Adam Ward, James Drew, and Susan
15 Hayward are natural persons who were employed at all times relevant herein by
16 Defendant as collection agents and are “debt collectors” as that term is defined by
17 15 U.S.C. § 1692a(6), but whose true names are unknown.

18 14. Cal. Civ. Code § 1788.2(d) and § 1788.2(f) define the terms “debt(s)”
19 and “consumer debt” as money, property, or their equivalent, which is due or
20 owing, or alleged to be due or owing, from a natural person to another person.
21 Plaintiff is a natural person who allegedly incurred financial obligations for a
22 personal loan, and therefore meets the definition of “debt(s)” and “consumer debt”
23 under Cal. Civ. Code § 1788.2(d) and § 1788.2(f).

24 15. 15 U.S.C. § 1692a(5) sets out the definition of “debt(s)” as financial
25 obligations primarily for personal, family or household purposes. The alleged
26 debts incurred by Plaintiff were for personal, family, or household purposes,
27 meeting the criteria for “debt(s)” under 15 U.S.C. § 1692a(5).

1 16. Plaintiff fell behind and defaulted on the payments allegedly owed on
2 the alleged debt.

3 17. Plaintiff is informed and believes, and thereon alleges, that subsequent
4 to falling behind in payments of the alleged debt, the alleged debt was assigned,
5 placed, or otherwise transferred to Defendant for collection.

6 18. Defendant's various communications with Plaintiff including
7 Defendant's repeated and willful calls to Plaintiff's cell phone, voicemails, and
8 calls and communications with Plaintiff's sister outlined in this Complaint were
9 each an attempt to collect a debt and fall within the term "communication" as it is
10 defined by 15 USC § 1692a(2) and a "debt collection" as that term is defined by
11 Cal. Civ. Code § 1788.2(b).

12 ***Illegal Auto-Dialed Collection Calls***

13 19. At all times relevant to this Complaint, Plaintiffs were "person[s]" as
14 defined by 47 U.S.C. § 153(39).

15 20. At all times relevant to this Complaint, Plaintiff was and is a
16 subscriber to cellular telephone services within the United States.

17 21. At all times relevant to this Complaint, Plaintiff's service included
18 one cellular telephone and number.

19 22. At all times relevant to this Complaint, Defendant has used,
20 controlled, and/or operated "automatic telephone dialing systems" as defined by 47
21 U.S.C. § 227(a)(1) and 47 C.F.R. 64.1200(f)(2).

22 23. The collection attempts and communications to Plaintiff by Defendant
23 and other collection agents employed by Defendant, violated the TCPA and
24 multiple provisions of the FDCPA.

25 24. Within four years immediately preceding the filing of this lawsuit,
26 Defendant and its agents called Plaintiff's cellular telephone on numerous
27 occasions in violation of the TCPA.
28

1 25. The “caller ID” on Plaintiff’s cellular phone indicated that the
2 Defendant made calls to Plaintiff from various phone numbers, including (716)
3 362-0320, (855) 208-3672, (716) 677-4883, (757) 963-7007, (716) 245-7044,
4 (716) 245-7054, and (866) 761-3025.

5 26. Without the prior express consent from Plaintiff, Defendant and its
6 collectors and agents repeatedly used an automatic telephone dialing system to call
7 Plaintiff’s cellular telephone in an attempt to collect this debt, more than thirty (30)
8 times.

9 27. All calls and messages were sent in willful violation of the TCPA and
10 FDCPA as Defendant never obtained prior express consent from Plaintiff, and had
11 no basis to believe that they had prior express consent from Plaintiff.

12 28. Upon good faith information and belief, Defendant employed the use
13 of a predictive dialer in making all or some of the calls complained of herein as
14 Plaintiff received numerous pre-recorded voicemails on her cell phone.

15 29. Plaintiff never provided her cellular telephone number to Defendant
16 or its collectors.

17 30. Defendant’s actions constituted unauthorized use of, and interference
18 with Plaintiff’s cellular telephone service associated with the number ending in
19 9320 for which Plaintiff paid money.

20 31. Plaintiff was charged money for each call Defendant made to
21 Plaintiff’s cellular phone.

22 32. Plaintiff felt frustrated and helpless as a result of the calls. The calls
23 disrupted Plaintiff’s daily activities and peaceful enjoyment of her personal life.

24 33. Defendant’s engagement in illegal conduct to collect a debt, namely
25 placing calls in violation of the TCPA is unfair and unconscionable and therefore
26 violates 15 U.S.C. § 1692f.

1 34. The natural consequence of Defendant's illegal and repetitious calls,
2 was to harass, oppress, or abuse Plaintiff and therefore violates 15 U.S.C. §§ 1692d
3 and 1692d(5).

4 35. The illegal and repetitious calls placed by Defendant in attempting to
5 collect a debt were by their very nature unreasonable, unusual, and inconvenient to
6 Plaintiff and violate 15 USC § 1692c(a)(1).

7 36. In violating 15 U.S.C §§ 1692f, 1692d, 1692d(5), and 1692c(a)(1),
8 Defendant's actions also violated Cal. Civ. Code § 1788.17.

9 ***Calls to Plaintiff's Sister***

10 37. On September 25, 2013, at approximately 12:33 PM, Pacific Standard
11 Time, Plaintiff received a missed call on her cell phone from Defendant.

12 38. On September 25, 2013 at approximately 2:39 PM, Central Standard
13 Time, Defendant called and spoke with Patsy Mobley ("Patsy"), Plaintiff's sister
14 and a third party as that term is addressed in 15 U.S.C § 1692c(b).

15 39. During the conversation, the caller identified himself as Dylan
16 Walker. He stated that he was calling in regards to Plaintiff. Mr. Walker said that
17 he had Plaintiff's social security number and date of birth, that Plaintiff was in a
18 whole world of trouble, and that he was trying to save her. Mr. Walker asked
19 Patsy to have Plaintiff call him back at (716) 245-7044 and that he would hold
20 Patsy accountable for delivering the message.

21 40. On or around November 15, 2013, Patsy received several more calls
22 from Defendant.

23 41. According to 15 U.S.C. § 1692c(b) a debt collector's communication
24 with a third party, in connection with the collection of any debt, with any person
25 other than the consumer, his attorney, a consumer reporting agency if otherwise
26 permitted by law, the creditor, the attorney of the creditor, or the attorney of the
27 debt collector without the prior consent of the consumer given directly to the debt
28

1 collector, or the express permission of a court of competent jurisdiction or as
2 reasonably necessary to effectuate a postjudgment judicial remedy is prohibited.

3 42. 15 U.S.C § 1692b carves out an exception to 15 USC § 1692c(b)
4 permitting debt collectors to communicate with any person other than the
5 consumer for the purpose of acquiring location information.

6 43. “Location information” as defined in 15 U.S.C. § 1692a(7), is a
7 consumer’s place of abode, her telephone number at such place, or her place of
8 employment.

9 44. 15 USC § 1692b(3) prohibits a debt collector from communicating
10 with a third party for the purposes of acquiring location information more than
11 once.

12 45. Defendant did not have Plaintiff’s prior consent to communicate with
13 her sister Patsy.

14 46. Defendant’s communication with Patsy was not an attempt to acquire
15 Plaintiff’s location information. Defendant already had Plaintiff’s location
16 information as Defendant called Plaintiff minutes before calling Patsy. Defendant
17 never asked for Plaintiff’s address, telephone number, or her place of employment.
18 Defendant’s intention in communicating with Patsy was for her to deliver a
19 message to Plaintiff and induce a return call from Plaintiff.

20 47. Defendant communicated with Patsy more than once.

21 48. Accordingly, Defendant’s actions violate 15 USC §§ 1692c(b), 1692b,
22 and 1692b(3) and in doing so, also violate Cal. Civ. Code § 1788.17.

23 49. Defendant contacted and communicated with Plaintiff’s sister and
24 used deception, fear, intimidation, social pressure, embarrassment, and shame as a
25 method to collect a debt. Defendant did this by revealing to Patsy that Defendant
26 had Plaintiff’s social security number and date of birth and that Plaintiff was in a
27 whole world of trouble. Defendant then threatened Patsy by stating that he would
28 hold Patsy accountable for delivering the message. Defendant understood that

1 leaving such an intimidating and urgent message with Patsy would drive Patsy to
2 deliver the message out of concern for Plaintiff. Defendant also understood that
3 upon receiving the message, Plaintiff would be scared, embarrassed, and ashamed
4 and fearful of whom Defendant would call next. Defendant anticipated that such
5 methods would induce a call from Plaintiff and a collection of the alleged debt.

6 50. Defendant's tactics had a significant impact on Plaintiff. Upon
7 receiving the message from Patsy, Plaintiff was embarrassed, ashamed, stressed
8 out, and extremely anxious resulting in sleepless nights, difficulty concentrating at
9 work, nausea, and feeling fatigued during her daily activities. Plaintiff was
10 terrified as to whom Defendant would call next.

11 51. Defendant's conduct described above resulted in the oppression and
12 abuse of Plaintiff and her sister Patsy and violates 15 USC § 1692d.

13 52. Defendant's conduct described above was an unfair and
14 unconscionable means to collect or attempt to collect a debt and violates 15 USC §
15 1692f.

16 53. Defendant's conduct described above was a deceptive method to
17 collect or attempt to collect a debt or obtain information concerning a consumer
18 and therefore violates 15 USC § 1692e(10).

19 54. In violating 15 U.S.C §§ 1692d, 1692f, and 1692e(10), Defendant's
20 actions also violated Cal. Civ. Code § 1788.17.

21 ***Defendant's Voicemails***

22 55. On or around October 30, 2013, Defendant left a voicemail message
23 on Plaintiff's cell phone. The complete transcription of that message is as follows:

24 "Hello my name is Luis Gomez, I'm with Harbinger
25 Processing Group, we're contacting you in regards to a
26 matter that has remained unaddressed in our office for
27 quite some time. I'm going to need to hear back from you
28 in the next twenty four hours otherwise a decision will be
made on your behalf. Contact us immediately at 888 284-
7795. Your file number is 330536. Thank you."

1 56. On or around November 29, 2013, Plaintiff left a voicemail message
2 on Plaintiff's cell phone. The complete transcription of that message is as follows:

3 "This is Anthony Rossi, I'm calling from Harbinger
4 Processing Group for Mozella Mobley. I received a file
5 here on my desk today regarding your name and social
6 security number. The file number that was attached here is
7 330-536. And I do want to explain to you what is being
8 alleged against you and get your side of the story in the
9 event your statement differs I then intend to work this out
10 with you versus making a decision on your behalf. You
11 can contact me here today at area code 716 362-0320.
12 And again that file number when calling in is 330-536.
13 Thank you."

14 57. Defendant left Plaintiff numerous voicemails on her cell phone
15 between January 2014 and April 2014. The complete transcriptions of those
16 messages are as follows:

17 "This message is solely intended for Mozella Mobley. I do
18 apologize for any inconvenience but this contact
19 information has been left on a matter pertaining to
20 Mozella. Please return my call if you get this information
21 into your hands as soon as possible as this is a time
22 sensitive matter. I can be reached in my office at 866 761-
23 7025. Reference number 330536. Thank you."

24 "This is a confidential and urgent message intended solely
25 for Mozella Mobley [COMPUTERIZED VOICE SAYS
26 PLAINTIFF'S NAME]. My name is Adam Ward from
27 Harbinger Processing Group. I have been put in place to
28 address a time sensitive claim directly affecting both your
name and social security numbers specifically. I did want
to be fair in providing you with proper notification so that
you had the opportunity to address this matter on a
voluntary basis. Please return my call at 866 761-3025 and
refer to file number 330536 [COMPUTERIZED VOICE
SAYS NUMBER]. For immediate assistance please dial 0
and you will be transferred to a representative. Thank you.

1 “Hello this is a confidential and urgent message intended
2 solely for Mozella Mobley. My name is James Drew with
3 the Harbinger Processing Group. I’m contacting you today
4 regarding a previously unresolved matter requiring your
5 immediate attention. I wanted to give you a proper
6 notification and an opportunity to address this matter on a
7 voluntary basis. My phone number here is 866 761-3025.
8 And when calling please refer to reference number
9 330536. 330536. Thank You.”

10 58. During the same time period, January 2014 to April 2014, seven
11 identical pre-recorded voicemails were left for Plaintiff by Defendant. One of the
12 voicemails is transcribed as follows:

13 “This is a confidential and urgent message intended solely
14 for Mozella Mobley [COMPUTERIZED VOICE SAYS
15 PLAINTIFF’S NAME]. My name is Susan Hayward from
16 Harbinger Processing Group. I have been put in place to
17 address a time sensitive claim directly affecting both your
18 name and social security numbers specifically. I did want
19 to be fair in providing you with proper notification so that
20 you have the opportunity to address this matter on a
21 voluntary basis. Please return the call at 866 761-3023 and
22 refer to the file number 330536 [COMPUTERIZED
23 VOICE SAYS NUMBER]. For immediate assistance
24 please dial 0 and you will be transferred to the next
25 available representative. Thank you.”

26 59. In each and every one of Defendant’s voicemails, Defendant failed to
27 disclose that the communication was from a debt collector. Each and every
28 voicemail left by Defendant and transcribed herein violates 15 U.S.C. § 1692e(11).

60. In violating 15 U.S.C § 1692e(11), Defendant’s actions also violated
California Civil Code § 1788.17.

Respondeat Superior Liability

61. The acts and omissions of Dylan Walker, Luis Gomez, Anthony Rossi, Adam Ward, James Drew, and Susan Hayward, debt collectors employed as agents by Defendant who communicated with Plaintiff as described in this Complaint, were committed within the time and space limits of their agency relationship with their principal, Defendant.

62. The acts and omissions by Dylan Walker, Luis Gomez, Anthony Rossi, Adam Ward, James Drew, and Susan Hayward, were incidental to, or of the same general nature as the responsibilities that agents were authorized to perform by Defendant in collecting consumer debts.

63. By committing these acts and omissions against Plaintiff, Dylan Walker, Luis Gomez, Anthony Rossi, Adam Ward, James Drew, and Susan Hayward were motivated to benefit their principal, Defendant.

64. Defendant is therefore liable to Plaintiffs through the Doctrine of Respondeat Superior for the intentional and negligent acts, errors, and omissions done in violation of state and federal law by Dylan Walker, Luis Gomez, Anthony Rossi, Adam Ward, James Drew, and Susan Hayward including but not limited to violations of the FDCPA and RFDCPA.

First Claim for Relief—Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227 et seq.

65. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

66. Within a four year period immediately preceding this action, Defendant made numerous calls to Plaintiff's cellular telephone service using an automatic telephone dialing system in violation of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), and 47 C.F.R. 64.1200 (a)(1)(iii).

1 67. The acts and or omissions of Defendant at all times material and
2 relevant hereto, as described in this Complaint, were done unfairly, unlawfully,
3 intentionally, deceptively, and absent bona fide error, lawful right, legal defense,
4 legal justification or legal excuse.

5 68. As a causally-direct and legally proximate result of the above
6 violations of the TCPA and the C.F.R., Defendant at all times material and relevant
7 hereto, as described in this Complaint, caused Plaintiff to sustain damages.

8 69. Defendant did not have prior express consent from Plaintiff to use an
9 automatic telephone dialing system to call the Plaintiff's cellular telephone.

10 70. Under 47 U.S.C. § 227(b)(3)(B), Plaintiff is entitled to statutory
11 damages under the TCPA of \$500.00 per phone call made to Plaintiff.

12 71. Defendant willfully and knowingly violated the TCPA, and as such
13 Plaintiff is entitled to \$1,500.00 per phone call made to Plaintiff pursuant to 47
14 U.S.C. § 227(b)(3).

15 72. Plaintiff is entitled to injunctive relief prohibiting Defendant from
16 contacting Plaintiff on his cellular phone using an automated dialing system
17 pursuant to 47 U.S.C. § 227(b)(3)(a).

18
19 **Second Claim for Relief—Violations of the Fair Debt Collections Practices**
20 **Act 15 USC § 1692 et seq.**

21 73. Plaintiff incorporates by reference all of the above paragraphs of this
22 Complaint as though fully stated herein.

23 74. The foregoing acts and omissions of Defendants constitute numerous
24 and multiple violations of the FDCPA, including but not limited to each and every
25 one of the above-cited provisions of the FDCPA, 15 USC § 1692 et seq.

26 75. As a result of each and every one of Defendant's violations of the
27 FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. §
28 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15

1 U.S.C. § 1692k(a)(2)(A); and reasonable attorney's fees and costs pursuant to 15
2 U.S.C. § 1692k(a)(3) from Defendant.

3
4 **Third Claim for Relief—Violation of the Rosenthal Fair Debt Collection**
5 **Practices Act §§ 1788-1788.32 (RFDCPA)**

6 76. Plaintiff re-alleges and incorporates by reference the above paragraphs
7 as though set forth fully herein.

8 77. The foregoing acts and omissions of Defendants constitute numerous
9 and multiple violations of the RFDCPA, including but not limited to each and
10 every one of the above-cited provisions of Cal. Civ. Code §§ 1788-1788.32.

11 78. As a result of Defendant's violations of the RFDCPA, Plaintiff is
12 entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory
13 damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant
14 to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant
15 to Cal. Civ. Code § 1788.30(c) from Defendant.

16
17 **Prayers for Relief**

18 WHEREFORE, Plaintiff respectfully prays that judgment be entered against
19 Defendant, and Plaintiff be awarded damages from Defendant as follows:

20
21 **Telephone Consumer Protection Act**

- 22 1. for an award of statutory damages of \$500.00 per call pursuant to 47
23 U.S.C. § 227(b)(3)(B) from Defendant;
- 24 2. for an award of treble damages of \$1,500.00 per call pursuant to 47
25 U.S.C. § 227(b)(3) against Defendant;
- 26 3. for an injunction prohibiting Defendant from contacting Plaintiff on
27 her cellular phone using an automated dialing system pursuant to 47
28 U.S.C. § 227(b)(3)(a).

Fair Debt Collection Practices Act

4. an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) in an amount to be adduced at trial, from Defendant;
5. an award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. § 1692k(a)(2)(A), from Defendant;
6. an award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

Rosenthal Fair Debt Collection Practices Act

7. an award of actual damages pursuant to Cal. Civ. Code § 1788.30(a) in an amount to be adduced at trial, from Defendant;
8. an award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code § 1788.30(b), from Defendant;
9. an award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c), from Defendant.

Trial By Jury

Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands a trial by jury.

Dated: May 27, 2014.

Law Offices of Roberto Robledo

/s/ Roberto Robledo

Attorneys for Plaintiff